

## **EXHIBIT 1**

From April 1995 through December 2002, Respondent Henry M. Duque was an appointed member of the California Public Utilities Commission (the "CPUC"). As a member of the CPUC, Respondent was a public official and therefore prohibited by Government Code section 87100 of the Political Reform Act (the "Act")<sup>1</sup> from making, participating in making, or attempting to use his official position to influence any governmental decision in which he had a financial interest. In this matter, Respondent made nine governmental decisions that had a reasonably foreseeable material financial effect on a wireless telephone company in which he had an investment interest.

For the purposes of this stipulation, Respondent's violations of the Act are stated as follows:

COUNT 1: On or about September 16, 1999, as a member of the California Public Utilities Commission, Respondent Henry M. Duque made a governmental decision in which he had a financial interest, by voting on the assignment of telephone numbers to telephone companies that provide service in the 310 area code region while owning stock in Nextel Communications, Inc., a wireless telephone company that provides service in the 310 area code region, in violation of section 87100.

COUNT 2: On or about October 7, 1999, as a member of the California Public Utilities Commission, Respondent Henry M. Duque made a governmental decision in which he had a financial interest, by voting on the assignment of telephone numbers to telephone companies that provide service in the 818 area code region while owning stock in Nextel Communications, Inc., a wireless telephone company that provides service in the 818 area code region, in violation of section 87100.

COUNT 3: On or about November 4, 1999, as a member of the California Public Utilities Commission, Respondent Henry M. Duque made a governmental decision in which he had a financial interest, by voting on the assignment of telephone numbers to telephone companies that provide service in the 310 area code region while owning stock in Nextel Communications, Inc., a wireless telephone company that provides service in the 310 area code region, in violation of section 87100.

COUNT 4: On or about December 16, 1999, as a member of the California Public Utilities Commission, Respondent Henry M. Duque made a governmental decision in which he had a financial interest, by voting on the assignment of telephone numbers to telephone companies that provide service in the 707 area code region

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<sup>1</sup> The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in sections 18109 through 18997 of title 2 of the California Code of Regulations. All regulatory references are to title 2, division 6 of the California Code of Regulations, unless otherwise indicated.

while owning stock in Nextel Communications, Inc., a wireless telephone company that provides service in the 707 area code region, in violation of section 87100.

COUNT 5: On or about December 16, 1999, as a member of the California Public Utilities Commission, Respondent Henry M. Duque made a governmental decision in which he had a financial interest, by voting on the assignment of telephone numbers to telephone companies that provide service in the 408, 415, 510, 650, 714, and 909 area code regions while owning stock in Nextel Communications, Inc., a wireless telephone company that provides service in those area code regions, in violation of section 87100.

COUNT 6: On or about May 4, 2000, as a member of the California Public Utilities Commission, Respondent Henry M. Duque made a governmental decision in which he had a financial interest, by voting on whether to approve an interconnection agreement between Pacific Bell and Nextel Communications, Inc., a wireless telephone company in which he owned stock, in violation of section 87100.

COUNT 7: On or about May 4, 2000, as a member of the California Public Utilities Commission, Respondent Henry M. Duque made a governmental decision in which he had a financial interest, by voting on the assignment of telephone numbers to telephone companies that provide service in the 619 area code region while owning stock in Nextel Communications, Inc., a wireless telephone company that provides service in the 619 area code region, in violation of section 87100.

COUNT 8: On or about July 6, 2000, as a member of the California Public Utilities Commission, Respondent Henry M. Duque made a governmental decision in which he had a financial interest, by voting on a method for funding number pooling in the 310 area code region while owning stock in Nextel Communications, Inc., a wireless telephone company that provides service in the 310 area code region, in violation of section 87100.

COUNT 9: On or about July 20, 2000, as a member of the California Public Utilities Commission, Respondent Henry M. Duque made a governmental decision in which he had a financial interest, by voting on the assignment of telephone numbers to telephone companies that provide service in the 707 and 760 area code regions while owning stock in Nextel Communications, Inc., a wireless telephone company that provides service in the 707 and 760 area code regions, in violation of section 87100.

### **SUMMARY OF THE LAW**

A finding upon which the Act is based, as stated in section 81001, subdivision (b), is that public officials, whether elected or appointed, should perform their duties in an impartial

manner, free from bias caused by their own financial interests, or the financial interests of persons who have supported them.

To prevent conflicts of interest in governmental decision making, section 87100 prohibits state and local public officials from making, participating in making, or attempting to use their official positions to influence a governmental decision in which they know, or have reason to know, that they have a financial interest. Under section 87103, a public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on a recognized economic interest of the official. For purposes of sections 87100 and 87103, there are six analytical steps to consider when determining whether an individual has a conflict of interest in a governmental decision.<sup>2</sup>

First, the individual must be a public official as defined by the Act. Section 82048 defines “public official” to include members of a state governmental agency.

Second, the official must make, participate in making, or attempt to use his or her official position to influence a governmental decision. Under regulation 18702.1, subdivision (a), a public official “makes a governmental decision” when the official votes on a matter, obligates his or her agency to a course of action, or enters into a contractual agreement on behalf of his or her agency.

Third, the official must have an economic interest that may be financially affected by the governmental decision. Under section 87103, subdivision (a), an economic interest of a public official includes any investment in a business entity worth \$2,000 or more that is held at the time the governmental decision is made. Section 82034 defines “investment” to include stock issued by a business entity.

Fourth, it must be determined if the economic interest of the official is directly or indirectly involved in the decision. Under regulation 18704.1, subdivision (a), a business entity is directly involved in a governmental decision when that entity initiates the proceeding in which the decision will be made; or is a named party in, or the subject of, the proceeding concerning the decision. A business entity is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial, or revocation of any license, permit, or other entitlement to, or contract with, the business entity.

Fifth, it must be determined what materiality standard will apply to the economic interest of the public official. Under regulation 18705.1, subdivision (b), as it was in effect in 1999 and 2000, if a business entity is directly involved in a governmental decision, the reasonably foreseeable financial effect of the decision on the business entity is presumed to be material, unless the public official’s only economic interest in the business entity is an investment interest, and the official’s investment in the business entity is worth \$10,000 or less. This materiality standard is commonly referred to as the “one-penny” rule.

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<sup>2</sup> As set forth in regulations 18700 through 18708, the Commission has established an eight-step analysis for determining whether a public official has a conflict of interest in a governmental decision. The last two steps of the analysis are exceptions that allow a public official to participate in a governmental decision even though the official may have a conflict of interest. The two exceptions are not relevant to this matter.

Sixth, it must have been reasonably foreseeable, at the time the governmental decision was made, that the decision would have a material financial effect on the economic interest of the official. Under regulation 18706, subdivision (a), a material financial effect on an economic interest is reasonably foreseeable if it is substantially likely, not just a mere possibility, that one or more the materiality standards applicable to that economic interest will be met as a result of the governmental decision. (*In re Thorner* (1975) 1 FPPC Ops. 198.)

## **SUMMARY OF THE EVIDENCE**

From April 1995 through December 2002, Respondent Henry M. Duque was a member of the CPUC. Respondent was appointed to the CPUC on April 3, 1995 to fill a vacancy, and was reappointed to the CPUC for a full six-year term on December 17, 1996. As a member of the CPUC, Respondent was a public official and therefore prohibited from making, participating in making, or attempting to use his official position to influence any governmental decision in which he had a financial interest. As described below, Respondent made nine governmental decisions that had a reasonably foreseeable material financial effect on Nextel Communications, Inc., a company in which Respondent owned stock.

### COUNTS 1-5 and 7-9

#### **Making a Governmental Decision in Which the Official Has a Financial Interest**

##### Introduction

In 1999 and 2000, the CPUC commissioners wrestled with several issues surrounding the unprecedented increase in new telephone area codes in California, from 13 statewide in 1992 to 25 in 2000.

The telephone numbering system used in the United States was established in the 1940's using the familiar ten-digit dialing pattern for all telephone numbers, with the first three digits commonly known as the area code, and the second three digits, or prefix, referred to as the "central office code." For many years, telephone numbers were allocated to telephone companies through private arrangements. However, in 1996, Congress passed a law giving the Federal Communications Commission ("FCC") exclusive authority over all aspects of numbering administration in the United States, with the option of delegating that authority to state commissions, such as the CPUC.

In the 1990's, a numbering crisis began to emerge in the United States with the proliferation of fax machines, modems, and wireless telephones, which all required the assignment of new telephone numbers. Simultaneously, competition among service providers increased, and each service provider required that large blocks of telephone numbers be allocated to them in order to be able to serve potential new customers. Traditionally, each telephone company would receive at least one central office code (or 10,000 new telephone numbers) in a given area code region. With the increased demand for telephone numbers, area codes were being exhausted at a rapidly increasing rate. To provide relief in response to the exhaustion of an area code, the FCC identified three traditional remedies that the state could adopt. First, a state

could split the old area code region geographically. Second, a state could create a new “overlay” area code that is geographically coextensive with the old area code requiring all customers in that area to dial 11 digits for local calls. Third, a state could readjust the boundaries of an area region. Each alternative resulted in telephone customers incurring significant costs associated with a change in the customer’s telephone number.

With the threat of the exhaustion of all available area codes, the FCC began considering alternative ways to conserve finite numbering resources. Among the key conservation actions called for by the FCC was 1,000-block numbering pools, in which telephone companies are allocated telephone numbers in batches of 1,000, rather than 10,000, in order to reduce the inefficient allocation of telephone numbers. Another key action was requiring telephone companies to demonstrate their need before additional numbers are allocated to them in order to end the abusive practice of “stockpiling” unused telephone numbers. To allow states time to implement these alternative numbering conservation strategies, the FCC delegated authority to state commissions to ration the supply of existing central office codes by using lottery systems. Under a lottery system, only a few central office codes are allocated each month to telephone companies that are selected as a result of monthly drawings.

In 1999 and 2000, with the authority delegated by the FCC, the CPUC considered the various alternatives for bringing relief to various regions of the state facing the exhaustion of their current area codes.

### Making Governmental Decisions

Under regulation 18702.1, subdivision (a), a public official “makes a governmental decision” when the official votes on a matter.

**Count 1** – On September 16, 1999, the CPUC voted to suspend a previously adopted overlay plan for the 310 area code region in Los Angeles and Ventura Counties, and voted instead to institute number conservation efforts, including number pooling and the rationing of central office codes. As indicated in the decision, number conservation in the 310 area code region limited the number of central office codes that were available to telephone companies that had applied for central office codes in that area, including Nextel. As a member of the CPUC, Respondent voted against suspending the overlay plan for the 310 area code region, and wrote a dissent against the CPUC decision.

**Count 2** – On October 7, 1999, the CPUC voted against a proposed two-way geographic split of the 818 area code region in Los Angeles County, and voted instead to institute number conservation efforts, including number pooling and the rationing of central office codes. As indicated in the decision, number conservation in the 818 area code region limited the number of central office codes that were available to telephone companies who had applied for central office codes in that area, including Nextel. As a member of the CPUC, Respondent voted in favor of splitting the 818 area code region and wrote a dissent against the CPUC decision.

**Count 3** – On November 4, 1999, in response to a petition filed by Nextel requesting emergency allocation of central office codes in the 310 area code region, the CPUC voted to approve an interim rationing plan prior to implementing a number pooling system in that region. The CPUC also voted to require telephone companies in the 310 area code region to return any unused central office codes and to establish an emergency pool of central office codes for telephone companies that meet certain criteria. As indicated in the decision, number conservation in the 310 area code region limited the number of central office codes that were available to telephone companies who had applied for central office codes in that area, including Nextel. As a member of the CPUC, Respondent voted against the emergency rationing plan as being “too draconian,” and wrote a dissent against the CPUC decision.

**Count 4** – On December 16, 1999, the CPUC voted to approve a proposed three-way geographic split of the 707 area code region in Sonoma, Napa, and Solano Counties. As indicated in the decision, area code relief in the 707 area code region increased the number of central office codes that were available to telephone companies who had applied for central office codes in that area, including Nextel. As a member of the CPUC, Respondent voted in favor of splitting the 707 area code region.

**Count 5** – On December 16, 1999, the CPUC voted to suspend previously adopted overlay plans for the 408, 415, 510, 650, 714, and 909 area code regions in the San Francisco Bay Area and Orange County, and voted instead to institute number conservation efforts, including number pooling, and the rationing of central office codes. As indicated in the decision, number conservation in the 408, 415, 510, 650, 714, and 909 area code regions limited the number of central office codes that were available to telephone companies who had applied for central office codes in those areas, including Nextel. As a member of the CPUC, Respondent voted against suspending the overlay plans for those area code regions, and wrote a dissent against the CPUC decision.

**Count 7** – On May 4, 2000, the CPUC voted to suspend, in-part, a previously adopted three-way geographic split of the 619 area code region in San Diego County, and voted instead to institute number conservation efforts, including number pooling and the rationing of central office codes. As indicated in the decision, number conservation in the 619 area code region limited the number of central office codes that were available to telephone companies who had applied for central office codes in that area, including Nextel. As a member of the CPUC, Respondent voted against suspending the geographic split of the 619 area code region, and wrote a dissent against the CPUC decision.

**Count 8** – On July 6, 2000, the CPUC voted on a method for funding all present and future number pooling trials, including the number pooling trials being held in the 310, 415, 714, and 909 area code regions. Pursuant to the funding method adopted by the CPUC, every telephone company providing service within a given area code region, including Nextel, must bear a pro rata share of the cost of the numbering pool based on the company’s inventory of unused telephone numbers. As a member of the CPUC, Respondent voted in favor of the proposed funding method.

**Count 9** – On July 20, 2000, the CPUC voted against a proposed two-way geographic split of the 707 and 760 area code regions, and voted instead to institute number conservation efforts, including number pooling, and the rationing of central office codes. As indicated in the decision, number conservation in the 707 and 760 area code regions limited the number of central office codes that were available to telephone companies who had applied for central office codes in those areas, including Nextel. As a member of the CPUC, Respondent voted in favor of splitting the 707 and 760 area code regions, and wrote a dissent against the CPUC decision.

By voting on eight separate area code decisions, Respondent made eight governmental decisions, as defined in regulation 18702.1, subdivision (a).

### Economic Interest

At all times relevant to this matter, from September 16, 1999 to July 20, 2000, Respondent had an investment interest in Nextel worth in excess of \$10,000. Respondent's investment interest in Nextel was managed by a stockbroker, who made investment decisions without first conferring with Respondent. On May 12, 1999, 700 shares of Nextel stock were added to Respondent's investment portfolio. On January 21, 2000, 100 of those shares were sold; on March 14, 2000, another 350 shares were sold; on June 6, 2000, Nextel stock split 2 for 1; and on August 18, 2000, the remaining shares were sold.

The following table reflects the number of shares Respondent held in Nextel and the value of those shares on the date of each of the eight decisions described above:

<b>Count</b>	<b>Decision</b>	<b>Date of Decision</b>	<b>Number of Shares</b>	<b>Stock Price</b>	<b>Total Value of Stock</b>
1	99-09-067	09/16/99	700	\$37.44	\$26,208
2	99-10-022	10/07/99	700	\$39.97	\$27,979
3	99-11-027	11/04/99	700	\$45.38	\$31,766
4	99-12-049	12/16/99	700	\$46.47	\$32,529
5	99-12-051	12/16/99	700	\$46.47	\$32,529
7	00-05-025	05/04/00	250	\$56.97	\$14,242.5
8	00-07-022	07/06/00	500	\$61.56	\$30,780
9	00-07-053	07/20/00	500	\$72.50	\$36,250

By having an investment interest worth \$2,000 or more in Nextel, Respondent had an economic interest in Nextel as described in section 87103, subdivision (a).

### Direct Involvement

Each of the eight area code decisions discussed above involved the issuance of a limited supply of central office codes to all telephone companies doing business in a given area code region. The application and assignment of a central office code is tantamount to the application and grant of an entitlement. Accordingly, the decisions that affect the manner in which central

office codes are assigned are the types of decisions that are covered by regulation 18704.1, subdivision (a)(2).

Under regulation 18704.1, subdivision (a)(2), a business entity is the subject of a proceeding if a decision in the proceeding involves the issuance, renewal, approval, denial, or revocation of any license, permit, or other entitlement to, or contract with, the business entity. As a business entity that was the subject of a proceeding involving the issuance of an entitlement, Nextel was directly involved in each of the eight area code decisions.

#### Applicable Materiality Standard

At all relevant times, Respondent's investment interest in Nextel exceeded \$10,000. As Nextel was subject to the eight area code decisions, and as Respondent's investment interest in Nextel exceeded \$10,000, the applicable materiality standard for determining whether each of the eight decisions had a requisite financial effect on Nextel is the direct involvement materiality standard in regulation 18705.1, subdivision (b), as it existed in 1999 and 2000.

Under regulation 18705.1, subdivision (b), if a business entity is directly involved in a governmental decision, any reasonably foreseeable financial effect of the decision on the business entity is presumed to be material and may therefore constitute the basis for a conflict of interest.

#### Reasonably Foreseeable Material Financial Effect

The telephone number conservation efforts considered and adopted by the CPUC for the various area code regions significantly reduced the number of central office codes that telephone companies could request in each area code region. According to written comments from telephone companies on file with the CPUC, when the CPUC restricted the number of central office codes that could be allocated in a given area code region, the CPUC hampered the ability of telephone companies to compete for new customers. Thus, it was reasonably foreseeable that each of the eight area code decisions requiring Nextel and other telephone companies to participate in various number conservation efforts, had at least a one-penny effect on Nextel. As such, Respondent was prohibited from making those decisions.

Accordingly, by making eight governmental decisions in which he had a financial interest, Respondent committed eight violations of section 87100.

### COUNT 6

#### **Making a Governmental Decision in Which the Official Has a Financial Interest**

##### Introduction

The telephone company, Pacific Bell, once held a monopoly on telephone service in California. In 1996, Congress passed a law allowing other telephone companies to compete against Pacific Bell. To provide service to new customers, competing telephone companies had to either create their own telecommunications infrastructure, or lease access to Pacific Bell's



existing massive telecommunications system. To obtain access to Pacific Bell's extensive copper wire network, competing telephone companies had to enter into interconnection agreements with Pacific Bell every few years. Interconnection agreements determine how, and under what conditions, a telephone call from a customer of a competing telephone company will be routed on the Pacific Bell grid. These interconnection agreements must be approved by the CPUC.

#### Making a Governmental Decision

On May 4, 2000, the CPUC held a regularly scheduled public meeting. At the meeting, a proposed interconnection agreement between Pacific Bell and Nextel appeared as a consent item on the meeting agenda. As a member of the CPUC, Respondent voted to approve all of the matters that appeared on the consent calendar, including the proposed interconnection agreement between Pacific Bell and Nextel.

By voting to approve the consent calendar, Respondent "made a governmental decision" as defined in regulation 18702.1, subdivision (a).

#### Economic Interest

On May 4, 2000, Respondent owned 250 shares of Nextel stock valued at \$56.97 per share, for a total of \$14,242. By having an investment interest of \$2,000 or more in Nextel, Respondent had an economic interest in Nextel as described in section 87103, subdivision (a).

#### Direct Involvement

Nextel was a named party in the decision regarding whether to approve the items appearing on the consent calendar of the May 4, 2000 meeting of the CPUC. Under regulation 18704.1, as a named party in that decision, Nextel was directly involved in the decision.

#### Applicable Materiality Standard

At all relevant times, Respondent's investment interest in Nextel exceeded \$10,000. As Nextel was a named party in the decision, and as Respondent's investment interest in Nextel exceeded \$10,000, the applicable materiality standard for determining whether the decision had a requisite financial effect on Nextel is the direct involvement materiality standard in regulation 18705.1, subdivision (b), as it existed in 2000. Under that standard, if a business entity is directly involved in a governmental decision, any reasonably foreseeable financial effect of the decision on the business entity is presumed to be material and may therefore constitute the basis for a conflict of interest.

#### Reasonably Foreseeable Material Financial Effect

The decision regarding whether to approve the consent calendar, which included whether to approve the interconnection agreement between Pacific Bell and Nextel, effectively established the price, terms, and conditions of Nextel's use of Pacific Bell's telecommunications

system. Thus, it was reasonably foreseeable that the decision would have at least a one-penny effect on Nextel. As such, Respondent was prohibited from approving the consent calendar without first recusing himself from the item on the consent calendar that involved the interconnection agreement between Pacific Bell and Nextel.

Accordingly, by making a governmental decision in which he had a financial interest, Respondent committed a violation of section 87100.

## **CONCLUSION**

This matter consists of nine counts of violating section 87100, and carries a maximum administrative penalty of Two Thousand Dollars (\$2,000) per violation, for a total of Eighteen Thousand Dollars (\$18,000).

In mitigation, Respondent had previously directed his stockbroker not to purchase stock in any company that was regulated by the CPUC. Nevertheless, Respondent's stockbroker, unaware that the CPUC regulated wireless telephone companies, bought Nextel stock for Respondent's investment portfolio. According to Respondent, although he was aware that he owned Nextel stock, he was not aware that Nextel was involved in any of the proceedings discussed above. Upon being informed by a reporter that his investment interest might present a conflict, Respondent immediately sold all of his remaining Nextel stock. On his 1999 annual statement of economic interests, filed with the CPUC in February 2000, Respondent properly disclosed that he had an investment interest in Nextel.

In aggravation, a conflict of interest violation is one of the more serious violations of the Act as it creates the appearance that a governmental decision was made on the basis of an official's financial interest. Moreover, Respondent's conduct in this case was not an isolated event. Over the course of nine months, Respondent made nine governmental decisions that had a reasonably foreseeable material financial effect on Nextel.

Accordingly, the facts of this case justify the imposition of a total administrative penalty of \$18,000.